

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 23 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

GEORGE BERRY STRONG,

Petitioner - Appellant,

v.

W. J. SULLIVAN, Warden,

Respondent - Appellee.

No. 06-55956

D.C. No. CV-04-09563-CJC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Argued and Submitted January 11, 2008
Pasadena, California

Before: FARRIS and M. SMITH, Circuit Judges, and SANDOVAL^{**}, District Judge.

Petitioner George Berry Strong appeals from the district court's dismissal of a petition for writ of habeas corpus. We have jurisdiction pursuant to 28 U.S.C. §

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Brian E. Sandoval, United States District Judge for the District of Nevada, sitting by designation.

2253. We affirm. Because the facts are familiar to the parties, we do not recite them here.

Strong's certified claim based on the voluntariness of his plea is procedurally barred. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991) (The federal court "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment."). On direct appeal, the California Court of Appeal denied his claim because he failed to comply with California Penal Code § 1237.5, an independent and adequate state procedural ground. *See People v. Mendez*, 969 P.2d 146 (Cal. 1999). Strong has not shown cause and prejudice to overcome this bar. *Poland v. Stewart*, 169 F.3d 573, 587 (9th Cir. 1999)

We also deny the motion to expand the Certificate of Appealability (COA) to include a claim for ineffective assistance of counsel. *See* 9th Cir. R. 22-1(e) (construing the inclusion of an uncertified issue in the opening brief as a motion to expand the COA). Strong has not made a "substantial showing of the denial of a constitutional right," as required for a COA. 28 U.S.C. § 2253(c)(2); *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000).

AFFIRMED.